

CHAPTER 752

CORRECTIVE, DISCIPLINARY AND ADVERSE ACTIONS

APPENDIX A

GUIDANCE IN EXERCISING OPTIONS DISCUSSED IN CHAPTER 752

1. **PURPOSE.** The purpose of Appendix A is to provide advice and guidance to supervisors and managers in effecting disciplinary actions.

2. **DEPARTMENT OF THE NAVY (DON) PHILOSOPHY OF DISCIPLINE.**

Discipline is a managerial tool intended to correct deficiencies in employee behavior and attitude, correct situations which interfere with efficient operations, maintain high standards of government service and maintain public confidence in the DON. It is not the philosophy of DON to utilize disciplinary measures for the sole purpose of punishing employees. An employee whose behavior is not acceptable to management, but whose behavior is not corrected is quite likely to persist in that unacceptable behavior in the erroneous belief that it is correct, or at least condoned. Supervisors and managers have an obligation to such employees to correct behavioral deficiencies while they are still minor and before the behavior becomes a habit and a bad example to others. It is easier to correct a first instance of deficient behavior than to ignore the situation and later try to correct the third, fourth, or fifth instance. It is easier and better management to correct a minor case of deficient behavior than to ignore the situation and allow the problem to become a major one.

3. **CONSIDERATIONS IN SELECTING A PROPER COURSE OF**

CORRECTIVE ACTION. In the case of Douglas v. Veterans Administration, the Merit Systems Protection Board (MSPB) described a number of factors that may be relevant in determining appropriate discipline in particular cases. These factors, commonly referred to as the Douglas Factors, are provided for the consideration of supervisors and managers who may be faced with the task of selecting an appropriate course of action. It should be noted that not all factors will be pertinent to each and every case and the list is not inclusive. Selection of the penalty requires a responsible balancing of those factors relevant to the specific situation. The Douglas Factors are the:

a. Nature and seriousness of the offense, and its relation to the employee's duties, position, and responsibilities, including whether the offense was intentional or technical or inadvertent, or was committed maliciously or for gain, or was frequently repeated.

b. Employee's job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of the position.

c. Employee's past disciplinary record.

d. Employee's past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability.

e. Effect of the offense upon the employee's ability to perform at a satisfactory level and its effect upon supervisors' confidence in the employee's ability to perform assigned duties.

f. Consistency of the penalty with those imposed upon other employees for the same or similar offenses.

g. Consistency of the penalty with the applicable agency table of penalties.

h. Notoriety of the offense, or its impact upon the reputation of the agency.

i. Clarity with which the employee was on notice of any rules that were violated in committing the offense, or had been warned about the conduct in question.

j. Potential for employee's rehabilitation.

k. Mitigating circumstances surrounding the offense such as unusual job tensions, personality problems, mental impairment, harassment, or bad faith, malice or provocation on the part of others involved in the matter.

l. Adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.

4. ALTERNATIVE COURSES OF ACTION. Instances of employee misconduct should never go unattended. All misconduct, however, does not necessarily warrant formal disciplinary action. Other forms of correction available are:

a. *Explanation or Training.* If the employee is unaware of the proper performance or conduct, it may be that training, or perhaps a sound explanation, will be sufficient to correct the problem. This alternative is particularly likely to be appropriate when the employee is new or working in an unfamiliar environment.

b. *Civilian Employee Assistance Program.* As a general rule it is in the best interests of both DON and the employee to rehabilitate rather than remove. Misconduct is not always willful. Sometimes it stems from alcoholism, misuse of drugs, or other personal problems which may be helped through the Civilian Employee Assistance Program (CEAP). A supervisor should seek to learn enough to make a determination whether to refer an employee to a CEAP counselor, take disciplinary action, or do both concurrently.

c. *Letter of Caution.* Sometimes a supervisor may want to warn an employee that continued instances of misbehavior or unacceptable performance may lead to disciplinary action. These letters are not disciplinary or adverse actions. The warning is prospective only and is generally not grievable (see Subchapter 2 of this Chapter). However, it may

be grievable if the employee is covered by a negotiated agreement which does not exclude letters of caution from the negotiated grievance procedure.

d. *Letter of Requirement.* In cases where the leave privilege is abused, a supervisor may wish to impose requirements over an individual which do not apply to the rest of the work force. This can be done by a letter of requirement which establishes the precise circumstances under which leave will be approved or precisely what performance is required (see Subchapter 2 of this Chapter).

5. SPECIAL DISCIPLINARY SITUATIONS

a. *Indebtedness.* DON expects its employees to pay their just debts. When they do not, disciplinary action may be necessary. However, a suspension is normally not an action used for indebtedness since a suspension would only further reduce an employee's ability to pay the debt. It is generally better to issue one or more letters of reprimand, depending upon the circumstances. If the letters are ineffective, it may be appropriate to initiate removal action.

b. *Leave Abuse.* If an employee is absent without permission, he/she should be charged with Absence Without Leave (AWOL). A charge of AWOL will support a disciplinary action. However, an instance of AWOL does not automatically require disciplinary action. An employee who is AWOL is not paid for the period of unapproved absence. Therefore, a supervisor may determine that the loss of pay is sufficient to prevent such absences in the future. Leave Without Pay (LWOP) is unpaid absence that has been requested by the employee and approved by the supervisor. Except in unusual cases, disciplinary action would not be taken in connection with LWOP.

c. *Non-Duty Status with Pay.* Sometimes the actions or conduct of an employee will represent a threat to life, health or government property and it will be necessary to get the employee out of the worksite while a disciplinary action is being processed. In such instances it is permissible to place the employee in a non-duty status with pay for the minimum period necessary.

d. *Drug and Alcohol Abuse Offenses.* An employee who engages in misconduct involving drugs and/or alcohol shall be disciplined in accordance with the provisions outlined in Appendix B of this Chapter unless the employee voluntarily refers himself/herself as a user of illegal drugs under the "safe harbor" provision of DON's Drug-Free Workplace Program provided that activity management was otherwise unaware of such activity. (See Chapter 792, of this Manual for specific information.)

e. *Voluntary Action by Employee.* An employee who is confronted by management with a potential disciplinary situation will sometimes volunteer to accept a lower grade, a reassignment, or resign in lieu of disciplinary action. There is nothing wrong with this provided management has not coerced the employee into taking such an action. Great care should be taken to avoid the appearance of coercion. It is permissible to tell an employee that a removal action is contemplated. It is not permissible to say the

employee must resign or a removal will be proposed. The latter example is coercion. If the employee asks if he/she can resign or what the effect of resignation on the action being taken would be, refer the employee to HRO Norfolk. Employees who believe they were coerced into resigning or involuntarily taking a change to lower grade may file an appeal with MSPB.

f. Performance Related Adverse Actions. Where an employee's deficiencies are performance related rather than due to misconduct, that employee may be demoted or removed either through the procedures described in Chapter 432 of this manual, or through the adverse action procedures outlined in Subchapter 4 of this Chapter. (See Chapter 432 of this Manual for details on performance-based actions.)